

# CRS Report for Congress

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## **9/11 Commission Recommendations: Intelligence Budget**

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Thomas J. Nicola  
Legislative Attorney  
American Law Division

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# 9/11 Commission Recommendations: Intelligence Budget

## Summary

This report identifies the main recommendations of the 9/11 Commission with respect to the intelligence budget. The National Commission on Terrorist Attacks, known as the 9/11 Commission, on July 22, 2004 recommended replacing the Director of Central Intelligence with a National Intelligence Director: (1) to oversee national intelligence centers on specific subjects of interest across the United States government; and (2) to manage the national intelligence program and oversee agencies that contribute to it. The National Intelligence Director would submit a unified budget for national intelligence and would receive an appropriation for national intelligence and apportion appropriated funds to appropriate agencies in the intelligence community.

The Commission also recommended that the top line of the intelligence budget should be made public and that Congress should pass a separate appropriations act for national intelligence rather than include funding for intelligence activities in the appropriations acts for the Department of Defense and those for other departments that have elements of the intelligence community. In addition, the Commission proposed that Congress should establish either a joint committee on intelligence or a single committee in each House of Congress that combines authorizing and appropriating authorities.

This report also describes the intelligence budget process under current law to explain the effect of these recommendations and presents the current budget authorities of the Director of Central Intelligence, as well as budget provisions in two bills, S. 2774 and H.R. 5040, that include all Commission recommendations.

This report will be updated to reflect major legislative developments.

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# 9/11 Commission Recommendations: Intelligence Budget

The National Commission on Terrorist Attacks, known as the 9/11 Commission, on July 22, 2004 recommended replacing the Director of Central Intelligence with a National Intelligence Director: (1) to oversee national intelligence centers on specific subjects of interest across the United States government; and (2) to manage the national intelligence program and oversee agencies that contribute to it.<sup>1</sup> The National Intelligence Director (NID) would submit a unified budget for national intelligence that reflects priorities chosen by the National Security Council and an appropriate balance among the varieties of technical and human intelligence, collection, and analysis. The NID would receive an appropriation for national intelligence and apportion the funds to the appropriate agencies, in line with that budget, and have authority to reprogram funds among the national intelligence agencies to meet any new priority.<sup>2</sup>

The Commission also recommended that the overall amount of money being appropriated for national intelligence no longer should remain secret and that Congress should pass a separate appropriations act for intelligence.<sup>3</sup> It also said that because it believed that congressional oversight for intelligence is not functioning adequately, Congress should establish either a joint committee on intelligence based on the model of the Joint Committee on Atomic Energy or a single committee in each House of Congress that combines authorizing and appropriating authorities.<sup>4</sup>

The Commission made this recommendation after it concluded that the Director of Central Intelligence (DCI) has “too many jobs,” i.e., to run the Central Intelligence Agency; to manage the loose confederation of 15 agencies or parts of agencies that comprise the intelligence community; and to serve as the analyst in chief for the government, sifting evidence and directly briefing the President as principal intelligence advisor.<sup>5</sup> Although, the Commission observed, the DCI is responsible for the performance of the intelligence community, it asserted that the Director lacks

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<sup>1</sup> *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, § 13.2, 411 (Official Government Edition 2004) (hereinafter *9/11 Commission Report*).

<sup>2</sup> *Id.* at 412.

<sup>3</sup> *Id.* at 416.

<sup>4</sup> *Id.* § 13.4 at 416.

<sup>5</sup> *Id.* at 409; section 103 of the National Security Act, ch. 343 (1947), 50 U.S.C. 403-3, grants these three responsibilities to the Director of Central Intelligence.

authorities critical for any agency head including, among other things, control over purse strings.<sup>6</sup>

A brief discussion of the meanings of the terms “intelligence community” and “intelligence budget” and a description of the current intelligence budget process helps to explain the effect of these recommendations.

**Intelligence Community.** Section 3a(3) of the National Security Act of 1947, as amended, 50 U.S.C. § 401a, states that the term “intelligence community” includes

the Office of the Director of Central Intelligence, including the Office of the Deputy Director for Central Intelligence, the National Intelligence Council, and such other offices as the Director may designate; the Central Intelligence Agency [CIA]; the National Security Agency [NSA], the Defense Intelligence Agency [DIA], the National Geospatial-Intelligence Agency [NGA, formerly the National Imagery and Mapping Agency]; the National Reconnaissance Office [NRO]; other offices of the Department of Defense for the collection of specialized national intelligence through reconnaissance programs; the intelligence components of the Army, Navy, Air Force, Marine Corps, Federal Bureau of Investigation, Department of the Treasury, Department of Energy, and Coast Guard; the Bureau of Intelligence and Research of the Department of State; the elements of the Department of Homeland Security concerned with analyzing foreign intelligence information; and such other elements of any other department or agency as may be designated by the President, or designated jointly by the Director of Central Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

**Intelligence Budget.** The intelligence budget has three components, the National Foreign Intelligence Program (NFIP), the Joint Military Intelligence Program (JMIP), and the Tactical Intelligence and Related Activities (TIARA) Program.<sup>7</sup> Section 3(6) of the National Security Act of 1947, as amended, 50 U.S.C. § 401a, states that the term “National Foreign Intelligence Program” refers to:

all programs, projects, and activities of the intelligence community, as well as any other programs of the intelligence community designated jointly by the Director of Central Intelligence and the head of a United States department or agency or by the President. Such term does not include programs, projects, or activities of the military departments to

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<sup>6</sup> 9/11 Commission Report at 409..

<sup>7</sup> CRS Report 94-261 F, *Intelligence Spending: Should Total Amounts Be Made Public?* at CRS-3, by Richard A. Best, Jr. and Elizabeth B. Bazan (hereinafter *Intelligence Spending*).

acquire intelligence solely for the planning and conduct of tactical military operations by the United States armed forces.

The National Foreign Intelligence Program (NFIP) consists of intelligence programs, projects, and activities undertaken in support of decisionmaking at the national level and conducted by the CIA, DIA, NSA, NRO, NGA, and other agencies in the Washington area.<sup>8</sup> The Joint Military Intelligence Program (JMIP) and the Tactical Intelligence and Related Activities (TIARA) Program refer to intelligence-related activities. JMIP supports Defense Department-wide activities. The TIARA Program includes a “diverse array of reconnaissance and target acquisition programs which are a functional part of the basic military force structure and provide direct support to military operations.”<sup>9</sup> TIARA programs are conducted by intelligence components of the Department of Defense in support of unified commanders and subordinate echelons in conducting military operations in addition to meeting some national level requirements.<sup>10</sup>

**Current Intelligence Budget Process.**<sup>11</sup> A large majority of the budget for the components of the intelligence budget ( NFIP, JMIP and the TIARA Program) for the CIA, NSA, DIA, NRO, and NGA is hidden in the appropriations act for the Department of Defense.<sup>12</sup> The House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence conduct extensive oversight hearings, almost always in closed sessions, and report authorization bills and reports with classified annexes.<sup>13</sup> The Intelligence Committees do not have exclusive jurisdiction over authorizations for intelligence program expenditures; the House and Senate Committees on Armed Services have jurisdiction over some intelligence activities in the authorization acts for the Department of Defense and authorizations for these activities are classified.<sup>14</sup>

The Subcommittees on Defense of the House and Senate Committees on Appropriations review intelligence budget requests and approve funding levels.<sup>15</sup> Funding for most intelligence activities included in the defense appropriations bills is not identified as such either in legislation itself or in the accompanying reports, but

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at n. 2, quoting from U.S. Congress, House of Representatives, 103d Cong., 1<sup>st</sup> Sess., Permanent Select Committee on Intelligence, *Intelligence Authorization Act for Fiscal Year 1994*, H.Rept. 103-162, pt. 1, p. 12 (1993).

<sup>10</sup> *Intelligence Spending* at CRS-3.

<sup>11</sup> See CRS Report RS21945, *The U.S. Intelligence Budget: A Basic Overview*, by Stephen Daggett, for more information.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at CRS-8.

<sup>14</sup> *Id.* at CRS-10.

<sup>15</sup> *Id.*

does appear in classified annexes to the reports which Senators and Members of Congress can read under guidelines designed to protect secrecy.<sup>16</sup>

It has been estimated that more than 85% of the intelligence budget is executed by agencies not under control of the Director of Central Intelligence.<sup>17</sup> The appropriation in the DOD appropriations act for NFIP agencies, including the CIA, is given directly to the Secretary of Defense, who disburses appropriated funds to the various agencies, including NFIP's largest ones, the National Security Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency,<sup>18</sup> entities located in the Department of Defense.

The remaining portion of the budgets for intelligence elements, such as those in the FBI in the Department of Justice and in the Departments of State, Treasury, and Energy, is funded in appropriations acts for the departments of which they are a part, but all of these combined represent a small percentage of total intelligence expenditures.<sup>19</sup>

**Current DCI Budget Authorities.** The 9/11 Commission asserted that, "The only budget power of the DCI over agencies other than the CIA lies in coordinating budget requests of the various intelligence agencies into a single program for submission to Congress."<sup>20</sup> Nonetheless, a recitation of budget authorities that have been granted to the Director by the National Security Act of 1947, as amended, and by Executive Order 12333 of December 4, 1981, as amended by Executive Order 13355 of August 27, 2004, reveals that the DCI has additional budget authorities. Authorities granted in the National Security Act include:

section 103(c)(1) of the National Security Act, 50 U.S.C. § 403-3(c)(1)(A), which authorizes the DCI "to facilitate the development of an annual intelligence budget";

section 104(b), 50 U.S.C. § 404(b), which requires the DCI "to prepare and approve all budgets for each of the intelligence community agencies that comprise the National Foreign Intelligence Program (NFIP)," an aggregation of budgets of the 15 agencies, including the CIA, that comprise the intelligence community;

section 104(c), 50 U.S.C. § 403-4(c), which provides that, "No funds made available under the National Foreign Intelligence

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<sup>16</sup> *Id.* at CRS-8 and CRS-10.

<sup>17</sup> CRS Report RL32506, *The Position of Director of National Intelligence: Issues for Congress*, at CRS-3, by Alfred Cumming, *citing* Report of the Commission on the Roles and Capabilities of the United States Intelligence Community, *Preparing for the 21<sup>st</sup> Century: An Appraisal of the U.S. Intelligence*, at. xix (Mar. 1, 1996).

<sup>18</sup> *Id.*

<sup>19</sup> *Intelligence Spending* at CRS-9.

<sup>20</sup> *9/11 Commission Report* at 410.



Program may be reprogrammed [i.e., shifted between programs, projects, or activities within a single appropriations account] by any element of the intelligence community without the prior approval of the Director of Central Intelligence except in accordance with procedures issued by the Director. The Secretary of Defense shall consult with the Director of Central Intelligence before reprogramming funds made available under the Joint Military Intelligence Program”;

section 104(d), 50 U.S.C. § 403-4(d), which provides that the DCI, “with the approval of the Director of Management and Budget, may transfer funds [i.e., shift from one appropriations account to another] appropriated for a program within the National Foreign Intelligence Program to another such program and, in accordance with procedures to be developed by the Director and the heads of affected departments and agencies, may transfer personnel authorized for an element of the intelligence community to another such element for periods up to a year.” This authority is granted subject to some conditions, such as that no transfer of funds or personnel from the Federal Bureau of Investigation can be involved and that no transfer can take place if the secretary or department head objects to the transfer. Authority to object may not be delegated, except the Secretary of Defense may delegate it only to the Deputy Secretary of Defense.

On August 27, 2004, President George W. Bush signed Executive Order 13355<sup>21</sup> “Strengthened Management of the Intelligence Community” that amended Executive Order 12333 “United States Intelligence Activities” of December 4, 1981, as amended.<sup>22</sup> Section 3 “Strengthened Control of Intelligence Funding” of Executive Order 13355 amended section 1.5 (n), (o), and (p) of Executive Order 12333, to provide that:

*1.5 Director of Central Intelligence.* In order to discharge the duties and responsibilities prescribed by law, the Director of Central Intelligence shall be responsible directly to the President and the NSC [National Security Council] and shall: . . .

(n)(1) Develop, determine, and present with the advice of heads of departments or agencies that have an organization within the intelligence community, the annual consolidated NFIP [National Foreign Intelligence Program] budget. The Director shall be responsible for developing an integrated and balanced national intelligence program that is directly responsive to the national security threats facing the

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<sup>21</sup> 69 Fed. Reg. 53593 (Sept. 1, 2004); also accessible at [<http://www.whitehouse.gov>].

<sup>22</sup> See 50 U.S.C. § 401 nt., for a reprint of the text of Executive Order 12333.

United States. The Director shall submit such budget (accompanied by dissenting views, if any, of the head of a department or agency that has an organization within the intelligence community) to the President for approval; and

(2) Participate in the development by the Secretary of Defense of the annual budgets for the Joint Military Intelligence Program (JMIP) and the Tactical Intelligence and Related Activities (TIARA) Program.

(o)(1) Transfer, consistent with applicable law and with the approval of the Director of the Office of Management and Budget, funds from an appropriation for the NFIP to another appropriation for the NFIP or to another NFIP component;

(2) Review, and approve or disapprove, consistent with applicable law, any proposal to: (i) reprogram funds within an appropriation for the NFIP; (2) transfer funds from an appropriation for the NFIP to an appropriation that is not for the NFIP within the intelligence community; or (iii) transfer funds from an appropriation that is not for the NFIP within the intelligence community to an appropriation for the NFIP; and

(3) Monitor and consult with the Secretary of Defense on reprogrammings or transfers of funds within, into, or out of, appropriations for the JMIP and the TIARA Program.

(p)(1) Monitor implementation and execution of the NFIP budget by the heads of departments or agencies that have an organization within the intelligence community, including, as necessary, by conducting program and performance audits and evaluations;

(2) Monitor implementation of the JMIP and the TIARA Program and advise the Secretary of Defense thereon;

(3) After consultation with the heads of relevant departments, report periodically, and not less often than semiannually, to the President on effectiveness of implementation of the NFIP Program by organizations within the intelligence community, for which purpose the heads of departments and agencies shall ensure

that the Director has access to programmatic, execution, and other appropriate information.

**Legislation Addressing All Commission Recommendations.** On September 7, 2004, Senator John McCain and cosponsors introduced the 9/11 Commission Report Implementation Act of 2004, S. 2447, 108<sup>th</sup> Cong., 2d Sess., which, he said, “addresses each of the Commission’s 41 recommendations.”<sup>23</sup> Representative Christopher Shays and cosponsors introduced an identical bill, H.R. 5040, 108<sup>th</sup> Cong., 2d Sess., on September 9, 2004. Section 111 “National Intelligence Authority” of these bills would create the National Intelligence Authority as an independent establishment in the executive branch of government. Section 112 “National Intelligence Director” would establish the NID, who shall be appointed by the President with the advice and consent of the Senate. Section 132 “Responsibilities of the National Intelligence Director” would provide, with respect to the intelligence budget, that the Director “shall (1) develop and present to the President a unified budget for the intelligence and intelligence-related activities of the United States government; [and] (2) ensure a unified budget for the intelligence and intelligence-related activities of the United States government that reflects an appropriate balance among the varieties of technical and human intelligence methods and analysis; . . .”

Section 133 “Authorities of the National Intelligence Director” has a number of provisions relating to the intelligence budget, but before reciting them it should be noted that S. 2774 and H.R. 5040 would substitute the “National Intelligence Program” in place of the “National Foreign Intelligence Program,” which is defined in 3(6) of the National Security Act of 1947, as amended, 50 U.S.C. § 401a(6). Section 102(6) “Definitions” of S. 2774 and H.R. 5040 states that the term “National Intelligence Program”--

(A)(i) refers to all national intelligence programs, projects, and activities of the elements of the intelligence community; and

(ii) includes all programs, projects, and activities (whether or not pertaining to national intelligence) of the National Intelligence Authority, the Central Intelligence Agency [the text gives full names but acronyms are used here], NSA, NGA, NRO, the Office of Intelligence of the FBI, and the Directorate of Information and Infrastructure Protection of the Department of Homeland Security; but

(B) does not refer--

(i) to any program, project, or activity pertaining solely to the requirements of a

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<sup>23</sup> 150 *Congressional Record* S8864 (daily ed. Sept. 4, 2004); a reprint of S. 2774 begins at S8884.

single department, agency, or element of the United States government; or

(ii) to any program, project, or activity of the military departments to acquire intelligence solely for the planning and conduct of tactical military operations by the United States armed forces.

The definition of the “national intelligence program” is more comprehensive than the current definition of the “national foreign intelligence program” in section 3(6) of the National Security Act. Section 175 of S. 2774 and H.R. 5040 would amend section 3(6) to substitute the above definition of the NIP in place of the current definition of the NFIP.

Section 102(1) of S. 2774 and H.R. 5040 would define “intelligence” to include “foreign intelligence and counterintelligence.” “Foreign intelligence” would be defined in section 102(2) as “information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.” “Counterintelligence” would be defined as “information gathered, and activities conducted, to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities” in section 102(3). Section 102(5) would provide that “national intelligence” and “intelligence related to the national security” (A) each refer to intelligence which pertains to the interests of more than one department or agency of the government; and (B) do not refer to counterintelligence or law enforcement activities conducted by the Federal Bureau of Investigation except to the extent provided for in procedures agreed to by the National Intelligence Director and the Attorney General, or otherwise as expressly provided for in this title.” These definitions are identical to those in current law at section 3 of the National Security Act, 50 U.S.C. § 401a.

As noted earlier, section 133 of S. 2774 and H.R. 5040 have a number of subsections that relate to the NID’s authority over the budget for the National Intelligence Program, specifically:

(b) Determination of budgets for NIP and other intelligence. -- The NID [except for subsection titles which generally use acronyms, the bill text uses full words but this recitation uses acronyms] shall determine the annual budget for intelligence and intelligence-related activities of the United States government by--

(1) developing and presenting to the President an annual budget for the NIP, including, in furtherance of such budget, the review, modification, and approval of budgets of the intelligence community within the NIP utilizing the budget authorities in subsection (d)(1);

(2) providing guidance on the development of annual budgets for such elements of the intelligence community as are not within the NIP utilizing the budget authorities in subsection (d)(2);

(3) participating in the development by the Secretary of Defense of the annual budget for military intelligence programs and activities outside the NIP;

(4) having direct jurisdiction of amounts appropriated or otherwise made available for the NIP as specified in subsection (e);

(5) managing and overseeing the execution, and, if necessary, the modification of the annual budget for the NIP, including directing the reprogramming and reallocation of funds, and the transfer of personnel, among and between elements of the intelligence community within the NIP utilizing the authorities in subsections (f) and (g).

(c) Scope of NIP and JMIP.-- The NID and the Secretary of Defense shall jointly review the programs, projects, and activities [ppas] under the JMIP in order to identify the ppas within the JMIP as of the date of the enactment of this act that pertain to national intelligence. Any ppas so identified are to be carried out instead within the NIP.

Section 184 “Termination of the Joint Military Intelligence Program” of S. 2774 and H.R. 5040 would eliminate the JMIP effective October 1, 2005.

(d) Budget Authorities.--(1)(A) The NID shall direct, coordinate, prepare, modify, and present to the President the annual budgets of the elements of the intelligence community within the NIP, in consultation with the heads of the elements.

(B) The budget of an element of the intelligence community may not be provided to the President for transmission to Congress unless the Director has approved such budget.

(2)(A) The Director shall provide guidance for the development of the annual budgets for such elements of the intelligence community as are not within the NIP;

(B) The heads of the elements of the intelligence community referred to in subparagraph (A) shall coordinate closely with the Director in the development of the budgets of such elements, before the submission of their recommendations on such budgets to the President.

(e) Jurisdiction of Funds under the NIP.—Notwithstanding any other provision of law and consistent with section 504 of the National Security Act of 1947 (50 U.S.C. § 414), any amounts appropriated or otherwise made available for the NIP shall be appropriated to, and under the direct jurisdiction of, the NID.

(f) Role of Reprogramming.—(1) No funds under the NIP may be reprogrammed by any element of the intelligence community within the NIP without the prior approval of the NID except in accordance with procedures issued by the Director.

(2) The Director shall consult with the appropriate committees of Congress regarding modifications of existing procedures to expedite the reprogramming of funds within the NIP.

(g) Transfer of funds or personnel within the National Intelligence Program.—(1)(A) In addition to any other authorities available under law for such purposes, the NID, with the approval of the Director of the Office of Management and Budget, may transfer funds appropriated for a program within the NIP to another such program and, in accordance with procedures developed by the NID and heads of the departments and agencies concerned, may transfer personnel authorized for an element of the intelligence community to another such element.

(B) The NID may delegate a duty of the Director under this subsection only to the Deputy National Intelligence Director.

(2) A transfer of funds or personnel may be made under this subsection only if—

(A) the funds or personnel are being transferred to an

activity that is a higher priority intelligence activity;

(B) the need for funds or personnel for such activity is based on unforeseen requirements; and

(C) the transfer does not involve a transfer of funds to the Reserve for Contingencies of the Central Intelligence Agency.

Section 133(g)(2) of H.R. 2774 and H.R. 5040 would continue in identical language three conditions on the authority of the NID to transfer funds or personnel that currently apply to transfers by the DCI in section 104(d)(2) of the National Security Act of 1947, 50 U.S.C. § 403-4(c), but would omit two conditions, one relating to the FBI and the other relating to objections to transfers, that now apply. Section 104(d)(2) of the 1947 Act states that, “A transfer of funds or personnel may be made under this subsection only if– (i) [the first three conditions are identical to those in section 133(g)(2) of S. 2774 and H.R. 5040] . . . (iv) the transfer does not involve a transfer of funds or personnel from the Federal Bureau of Investigations subject to paragraph (B); and (v) . . . the Secretary or head of the department which contains the affected element or elements of the intelligence community does not object to such transfer.” Authority to object to a transfer generally may not be delegated by a secretary or department head, but the Secretary of Defense is authorized to delegate it only to the Deputy Secretary of Defense.

Section 133(g)(3)(4) and (5), which would relate to the period of availability of transferred funds and requirements for reporting transfers of funds and personnel to some congressional committees, would be identical to corresponding sections of section 104(d)(3), (4), and (5) of the National Security Act, 50 U.S.C. § 403-4(d)(3), (4), and (5), that currently apply to the Director of Central Intelligence.

Section 161 “Availability to Public of Certain Intelligence Funding Information” of S. 2774 and H.R. 5040 would require the President to disclose to the public for each year after Fiscal Year 2005 (1) the aggregate amount of appropriations requested in the budget of the President for the fiscal year concerned for intelligence and intelligence- related activities of the United States government and for each element or component of the intelligence community. It would direct Congress to disclose to the public for each year after Fiscal Year 2005 the aggregate amount of funds appropriated by Congress for the fiscal year concerned for intelligence and intelligence-related activities of the U.S. government and for each element or component of the intelligence community.

Section 302 “Reorganization of Congressional Jurisdiction” of S. 2774 and H.R. 5040 would provide that the 108<sup>th</sup> Congress shall not adjourn until each House has adopted necessary changes to its rules such that, effective at the start of the 109<sup>th</sup> Congress jurisdiction over proposed legislation, messages, petitions, memorials and other matters related to intelligence shall reside in either a joint Senate-House

authorizing committee using the model of the former Joint Committee on Atomic Energy, or a committee in each chamber with combined authorization and appropriations authority.<sup>24</sup> The proposed Joint Committee on Intelligence or the House and Senate Committees on Intelligence would be required to have not more than 9 members who would serve without term limits; at least one member of either the Joint Committee or House and Senate Intelligence Committees must also serve on the Committee on Armed Services, Judiciary, and Foreign Affairs and at least one member must serve on a Subcommittee on Defense of the Committee on Appropriations. The Joint Committee or the House and Senate Intelligence Committees would have authority to issue subpoenas, would have majority representation that would not exceed minority party representation by more than one member in each House; and would have a subcommittee devoted solely to oversight.

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<sup>24</sup> See CRS Report RL32525, *A Joint Committee on Intelligence: Proposals and Options from the 9/11 Commission and Others* by Frederick M. Kaiser.